

Securities and Exchange Commission

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of a personal loan to or for any of its directors or executive officers under section 13(k) of the Act (15 U.S.C. 78m(k)) with respect to any such loan made by the foreign bank as long as:

(1) Either:

(i) The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits or be subject to a deposit guarantee or protection scheme; or

(ii) The Board of Governors of the Federal Reserve System has determined that the foreign bank or another bank organized in the foreign bank's home jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in its home jurisdiction under 12 CFR 211.24(c); and

(2) The loan by the foreign bank to any of its directors or executive officers or those of its parent or other affiliate:

(i) Is on substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank, its parent or other affiliate; or

(ii) Is pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank, its parent or other affiliate and does not give preference to any of the executive officers or directors of the foreign bank, its parent or other affiliate over any other employees of the foreign bank, its parent or other affiliate; or

(iii) Has received express approval by the bank supervisor in the foreign bank's home jurisdiction.

NOTES TO PARAGRAPH (b): 1. The exemption provided in paragraph (b) of this section applies to a loan by the subsidiary of a foreign bank to a director or executive officer of the foreign bank, its parent or other affiliate as long as the subsidiary is under the supervision or regulation of the bank supervisor in the foreign bank's home jurisdiction, the subsidiary's loan meets the requirements of paragraph (b)(2) of this section, and the foreign bank meets the requirements of paragraph (b)(1) of this section.

2. For the purpose of paragraph (b)(1)(ii) of this section, a foreign bank may rely on a determination by the Board of Governors of the Federal Reserve System that another bank in the foreign bank's home jurisdiction

is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor under 12 CFR 211.24(c) as long as the foreign bank is under substantially the same banking supervision or regulation as the other bank in their home jurisdiction.

(c) As used in paragraph (1) of section 13(k) of the Act (15 U.S.C. 78m(k)(1)), *issuer* does not include a foreign government, as defined under 17 CFR 230.405, that files a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) on Schedule B.

[69 FR 24024, Apr. 30, 2004]

REGULATION 14A: SOLICITATION OF PROXIES

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.14a-1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate*. The term "associate," used to indicate a relationship with any person, means:

(1) Any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

(3) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or

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who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Employee benefit plan.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term “employee benefit plan” means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

(c) *Entity that exercises fiduciary powers.* The term “entity that exercises fiduciary powers” means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

(d) *Exempt employee benefit plan securities.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term “exempt employee benefit plan securities” means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current solicitation has been given pursuant to § 240.14a-13(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 240.14a-13(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

(e) *Last fiscal year.* The term “last fiscal year” of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting for which proxies are to be solicited or if the solicitation involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

(f) *Proxy.* The term “proxy” includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(g) *Proxy statement.* The term “proxy statement” means the statement re-

quired by § 240.14a-3(a) whether or not contained in a single document.

(h) *Record date.* The term “record date” means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(i) *Record holder.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term “record holder” means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(j) *Registrant.* The term “registrant” means the issuer of the securities in respect of which proxies are to be solicited.

(k) *Respondent bank.* For purposes of §§ 240.14a-13, 240.14b-1 and 240.14b-2, the term “respondent bank” means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

(l) *Solicitation.* (1) The terms “solicit” and “solicitation” include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by § 240.14a-7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under § 240.14a-2)

stating how the security holder intends to vote and the reasons therefor, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis,

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a registrant held by the security holder, or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (1)(2)(iv).

[51 FR 44275, Dec. 9, 1986, as amended at 52 FR 23648, June 24, 1987; 53 FR 16405, May, 9, 1988; 57 FR 48290, Oct. 22, 1992]

§ 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.

Sections 240.14a-3 to 240.14a-15, except as specified, apply to every solicitation of a proxy with respect to securities registered pursuant to section 12 of the Act (15 U.S.C. 78l), whether or not trading in such securities has been suspended. To the extent specified below, certain of these sections also apply to roll-up transactions that do not involve an entity with securities registered pursuant to section 12 of the Act.

(a) Sections 240.14a-3 to 240.14a-15 do not apply to the following:

(1) Any solicitation by a person in respect to securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person—

(i) Receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses,

(ii) Furnishes promptly to the person solicited (or such person's household in accordance with § 240.14a-3(e)(1)) a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for such purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding such material, and

(iii) In addition, does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(2) Any solicitation by a person in respect of securities of which he is the beneficial owner;

(3) Any solicitation involved in the offer and sale of securities registered under the Securities Act of 1933: *Provided*, That this paragraph shall not apply to securities to be issued in any transaction of the character specified in paragraph (a) of Rule 145 under that Act;

(4) Any solicitation with respect to a plan of reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as amended, if made after the entry of an order approving the written disclosure statement concerning a plan of reorganization pursuant to section 1125 of said Act and after, or concurrently with, the transmittal of such disclosure statement as required by section 1125 of said Act;

(5) [Reserved]

(6) Any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than:

(i) Name the registrant,

(ii) State the reason for the advertisement, and

(iii) Identify the proposal or proposals to be acted upon by security holders.

(b) Sections 240.14a-3 to 240.14a-6 (other than 14a-6(g)), 240.14a-8, and 240.14a-10 to 240.14a-15 do not apply to the following:

(1) Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or